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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re S.D., a Person Coming Under
the Juvenile Court Law.

B291931

(Los Angeles County
Super. Ct. No. 18CCJP03876)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.D.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Martha Matthews, Judge. Affirmed.

Annie Greenleaf, under appointment by the Court of
Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County
Counsel, Kristine Miles, Assistant County Counsel, and David

Michael Miller, Deputy County Counsel, for Plaintiff and
Respondent.

A.D. (Father) and N.F. (Mother) are the parents of S.D., a girl who was three years old when the Department of Children and Family Services (the Department) instituted dependency proceedings in juvenile court following an incident of domestic violence between Mother and Father that occurred while S.D. was in the family home with them. Mother did not contest the Department's dependency allegations against her but Father challenged the allegations against him. The juvenile court assumed jurisdiction over S.D., ordered her placed in Mother's custody, and granted Father monitored visitation. We consider whether Father's challenge to the jurisdiction findings against him is justiciable in light of the unchallenged jurisdiction findings against Mother. We also consider whether the juvenile court abused its discretion in ordering monitored visitation for Father.

I. BACKGROUND

A. *The Domestic Violence at Issue, and Initial Statements by the Parents Regarding the Same*

Mother and Father had been in a relationship for approximately 18 years when the Department began investigating the family's welfare in April 2018. The investigation was prompted by a referral alleging domestic violence between Father and Mother. Department personnel obtained a Bell Gardens Police Department report detailing a domestic violence episode and interviewed Father and Mother.

According to the police report, officers were dispatched to the family's address in response to a report that a third party heard screaming and a male yelling at a female in the family's apartment. When the officers arrived at the apartment, they

heard a male suspect yelling inside. The officers knocked on the door and asked Father to exit the residence to discuss the disturbance. Father said he and Mother were “only arguing.” Mother, on the other hand, said she and Father argued about infidelity and Father got violent—throwing a small table, pushing Mother multiple times (once causing her to fall onto a couch), throwing a small lighter at Mother, striking Mother’s right arm with his fist, and grabbing Mother’s face and shaking her. The responding officers arrested Father.¹

After Father’s arrest, a Department social worker re-interviewed Mother. (Father was then still in custody.) She said she and Father had argued because Father received a phone call from another woman, which upset Mother. S.D. was in the home during the argument but was not in the room where the argument started. As the parents were arguing, Father walked up to Mother and shoved her, causing her to fall back onto the couch. Mother walked away and Father followed her around the living room. Father punched Mother on her right arm with his fist two or three times and Mother shoved Father. When Mother walked to another part of the living room, Father followed and shoved Mother with both hands. As they continued to argue, Mother walked towards their bedroom. She turned around in the entryway and Father grabbed her on both sides of her face and squeezed. When Father let go, Mother shoved him and walked

¹ Father made a Mirandized post-arrest statement. He initially admitted “he pushed [Mother] during the argument” but when the interviewing officer sought to clarify what happened, Father “immediately changed his statement and said he did not push her.”

into S.D.'s room, picked her up, and took her back to the parents' bedroom. Father walked into the living room, and law enforcement arrived a few minutes later. The social worker observed bruises on Mother's arm, which she stated were a result of the altercation with Father.

Mother also told the Department social worker there had been a previous episode of domestic violence a month earlier. At that time, Mother and Father were again arguing about infidelity and Father hit Mother on the left side of her arm and her thigh, leaving bruises.

Mother told the social worker she was unsure whether she would continue a relationship with Father, explaining she would consider it if Father went into rehab. During another visit from the social worker a few days later, Mother stated she planned to move out of the home and into the maternal grandmother's home if Father were released from jail.

B. Interviews After Father Is Released from Custody

Not long thereafter, Mother bailed Father out of custody. Once released, Father spoke to a Department social worker about the alleged domestic violence between him and Mother. Father stated it was just a misunderstanding. He claimed the officers who arrested him told him they did so merely "because of the OJ Simpson incident" which required them to "take precautions on domestic violence incidents." Father claimed he merely had a disagreement with Mother and was trying to defuse the situation. He admitted kicking the living room table and getting loud, but he said that was "about it."

Father stated he loves S.D. and Mother and would not hit Mother. He denied he had ever hit Mother and further denied

using any drugs or alcohol (but was then unwilling to submit to an on-demand drug test). He also asserted the court hearing the criminal charge against him had not issued a protective order for Mother's benefit. (The social worker later received a minute order from the criminal court indicating the court *had* issued such a protective order.)

The social worker visited the family home two days later and interviewed Mother and Father together at their request. Father initially stated he would not move out of the home because everything was a misunderstanding and only a minor argument had occurred. He reiterated that he loves Mother and S.D. and would not hurt them. Father denied taking drugs or having any infidelity problems. He also denied the existence of a criminal protective order, but he agreed to show the social worker the court paperwork he was given. The social worker reviewed the documents and identified one as a three-year protective order that required Father to stay away from Mother. The social worker informed Mother and Father they were currently in violation of the protective order. Father stated no one had told him about the protective order and said he had not read the papers he received. After the social worker informed them they needed to abide by the protective order, Father agreed to move to his mother's home.

During a later conversation alone with the social worker, Mother denied being afraid of Father.

C. The Petition and Detention Hearing

In June 2018, the juvenile court issued an order removing S.D. from Father's custody. Days later, the Department filed a

petition asking the juvenile court to assume dependency jurisdiction over S.D.

As ultimately amended by interlineation and sustained by the juvenile court, the allegation under Welfare and Institutions Code section 300, subdivision (b)(1)² alleged as follows: “[S.D.’s] mother . . . and . . . father . . . have on two occasions engaged in violent physical altercations. On 04/29/2018, the father forcibly pushed the mother, causing the mother to fall onto a couch. The father repeatedly pushed the mother and struck the mother’s right arm with the father’s fist, inflicting a bruise to the mother’s arm. The father forcibly grabbed and squeezed the mother’s face. The father shook the mother. The mother pushed the father. The mother sustained redness to the mother’s face, upper chest and right arm. The mother sustained a bleeding laceration to the inside of the mother’s lip. The violent altercation occurred in the child’s home, while the child was present in the home. On one prior occasion in 2018, the father struck the mother’s left arm and thigh, inflicting bruises to the mother. The mother failed to protect the child. The mother allowed the father to reside in the child’s home and have unlimited access to the child. The father violated a restraining order. On 04/29/2018, the father was arrested for Inflicting Corporal Injury on a Spouse/Cohabitant. Such violent conduct by the father against the mother and the mother’s failure to protect the child place the child at risk of harm.”

² The petition also alleged a count under Section 300, subdivision (a), but that count was later dismissed by the juvenile court.

Undesignated statutory references that follow are to the Welfare and Institutions Code.

At the initial detention hearing in June 2018, the juvenile court detained S.D. from Father and ordered her released to Mother on the condition that Mother have no contact with Father.

D. The Court Assumes Dependency Jurisdiction

1. Facts recounted in the Department's jurisdiction report

The Department conducted additional interviews of the family between the detention and jurisdiction hearings. During the social worker's interview with Mother, she stated there had been tension in her relationship with Father for several months prior to the domestic violence incident. She and Father had both been laid off for approximately one month, and Father made new female friends that Mother did not know.

On the day of the alleged violent episode, Mother said she argued with Father after he received a phone call from an unknown woman. Mother could not recall specific details of what occurred, but she stated they argued about the phone call, exchanged words, and there was mutual pushing and hitting. Mother claimed S.D. was asleep in her bedroom during the incident. Mother subsequently bailed Father out of jail and was unaware there was a restraining order in place until the social worker pointed it out.

In addition, Mother reaffirmed there had been a prior incident in March 2018 that led to a physical altercation, but she could not recall details, except that S.D. was in the home during the incident, again asleep according to Mother. Mother did not agree with the criminal protective order and did not feel Father was a danger to her or S.D. She stated both she and Father were

to blame for the violence, that their actions were inappropriate, and that they need couples counseling to deal with the personal issues and stress in their relationship.

According to Mother, S.D. had not displayed any emotional or behavioral issues of concern. Mother did report S.D. appeared sad and asks to see Father daily. Mother further stated she can tell S.D. misses Father.

The Department's jurisdiction report also recounted a further interview with Father. He admitted he and Mother had argued as a result of him receiving a phone call from another woman. Father denied being a violent person, but he conceded he "lost it" after Mother asked how he would feel if she received phone calls from other men. Father stated he and Mother engaged in mutual shoving, and while he denied hitting her, he allowed that he kicked the coffee table and may have bumped into Mother (who he said bruises easily) while holding her by the arms.

Father told the social worker that Mother bailed him out of jail so he could go back to work before losing his job. He had enrolled in an anger management class as of late June 2018 and would do anything to reunify with his family. He had not yet had any visits with S.D. because no visitation monitor had been approved.³

³ The social worker also interviewed the paternal aunt and Father's adult daughter. The paternal aunt had lived with Mother and Father for about five years before S.D.'s birth and denied witnessing any domestic violence altercations. S.D.'s adult half-sibling also denied witnessing Father and Mother engage in domestic violence and stated Mother and Father provide good care for S.D.

2. The jurisdiction hearing

The court held the jurisdiction hearing in July 2018. Mother did not contest the petition's allegations against her, but Father disputed the allegations against him.

Father argued the Department had not met its burden of proof under either subdivision (a) or subdivision (b)(1) of section 300. He argued the violence in the case could not be considered ongoing or likely to continue and that there was no evidence of direct harm to S.D. Minor's counsel asked the court to assume jurisdiction under subdivision (b)(1), arguing S.D. was at risk of harm because she was young and was in the house during the incidents of domestic violence. Minor's counsel was concerned by Mother and Father seeming to downplay the incident and the risk to S.D.

The juvenile court found true the allegation of dependency jurisdiction under section 300, subdivision (b)(1), but not under subdivision (a) of that statute. The court expressed concern about the parents' statements "watering down" the incident and Mother's decision to bail Father out of jail and allow him to return to the home. The court also emphasized the domestic violence had occurred while S.D. was present in the home. The court accordingly found the Department had "met its burden by a preponderance of the evidence to show that this incident causes a risk of harm to this young child sufficient to sustain the jurisdiction of this court."

Turning to disposition, the court ordered S.D. would remain in Mother's custody. Father asked the court to order unmonitored visitation, arguing the only risk factors in the case related to Father's relationship with Mother and visitation could be facilitated by a third party. Minor's counsel objected, stating

she was concerned because no visits had yet occurred due to difficulties in obtaining a monitor. As a result, counsel stated she could not support unmonitored visits at that time but thought Father had a persuasive argument for unmonitored visitation if there were no issues with visits once they started.

The juvenile court ordered monitored visitation for a minimum of three hours, three times per week and ordered the Department to immediately evaluate as monitors all relatives who made themselves available. The court gave the Department discretion to liberalize Father's visitation to dispense with the need for monitoring and encouraged the Department to exercise that discretion soon if visits went well. It also ordered Father to submit to eight drug tests and participate in a domestic violence program for perpetrators.⁴

II. DISCUSSION

Father contends no substantial evidence supports the juvenile court's jurisdiction findings against him because the evidence did not demonstrate the domestic violence was ongoing or likely to recur. The juvenile court's uncontested finding that jurisdiction over the child was proper based on Mother's conduct means we need not address Father's challenge to the jurisdiction findings against him, but we shall briefly explain why we would affirm the finding that Father was also an offending parent.

⁴ The juvenile court noted that anger management and domestic violence are "two different things" and stated Father could discuss with the Department whether the anger management course he was enrolled in was also approved as a domestic violence program.

Specifically, substantial evidence establishes Father was the aggressor in two recent incidents of domestic violence against Mother that occurred while S.D. was present in the family home. Coupled with Father’s denial of his role in the domestic violence and both parents’ minimization of the conflicts, this provided sufficient reason for the juvenile court to conclude the requisite risk to S.D. persisted at the time of the jurisdiction hearing—which was held less than three months after the last domestic violence episode. We similarly conclude that in light of the evidence of Father’s role in the domestic violence (including his own statement that he “lost it” during his argument with Mother), the juvenile court’s order restricting Father to monitored visitation was an appropriate exercise of discretion.

A. *We Need Not Consider Father’s Challenge to the Jurisdiction Findings*

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*), quoting *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 (*Alexis E.*); see also *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491 [dependency law’s primary concern is the protection of children] (*I.A.*)). Mother waived her right to contest the allegations against her, and the court entered findings against Mother. Father does not challenge those

findings, which alone justify dependency jurisdiction over S.D. We therefore need not consider the sufficiency of the evidence to support the juvenile court’s jurisdictional findings that are specifically adverse to Father. (*I.A.*, *supra*, 201 Cal.App.4th at p. 1492 [“For jurisdictional purposes, it is irrelevant which parent created [the] circumstances” triggering jurisdiction]; see also *In re Briana V.* (2015) 236 Cal.App.4th 297, 308; *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397 “[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring [the minor] within one of the statutory definitions of a dependent”).)

Although we affirm the juvenile court’s jurisdiction findings for this reason, we nevertheless opt to briefly describe, for Father’s benefit, why the sustained dependency allegation as against him was supported by substantial evidence. (*Alexis E.*, *supra*, 171 Cal.App.4th at p. 451 [affirming finding of jurisdiction over minor because the father did not challenge the domestic violence allegations but “not[ing]” the court’s view on the challenged finding “for [the] Father’s benefit”]; see also *I.J.*, *supra*, 56 Cal.4th at p. 773.)

B. Substantial Evidence Supports the Juvenile Court’s Jurisdiction Finding Against Father

“Section 300, subdivision (b)(1), authorizes a juvenile court to exercise dependency jurisdiction over a child if the ‘child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, or . . . by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . mental

illness, developmental disability, or substance abuse.’ (§ 300, subd. (b)(1).)” (*In re L.W.* (2019) 32 Cal.App.5th 840, 848.) Where it is not alleged the child or children have already suffered serious physical harm or illness, the juvenile court must determine whether a substantial risk of the same exists at the time of the jurisdiction hearing. (*In re T.V.* (2013) 217 Cal.App.4th 126, 133 (*T.V.*)). The court may “consider past events when determining whether a child presently needs the juvenile court’s protection” because “[a] parent’s past conduct is a good predictor of future behavior.” (*Ibid.*) “In reviewing the jurisdictional findings . . . , we look to see if substantial evidence, contradicted or uncontradicted, supports them.” (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

Courts have repeatedly recognized a child’s exposure to domestic violence may support jurisdiction under section 300, subdivision (b)(1). (See, e.g., *In re Jesus M.* (2015) 235 Cal.App.4th 104, 112-113; *T.V.*, *supra*, 217 Cal.App.4th at pp. 134-135; *In re R.C.* (2012) 210 Cal.App.4th 930, 941-942 (*R.C.*); *In re E.B.* (2010) 184 Cal.App.4th 568, 575-576 (*E.B.*); *In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) Some courts have held such a finding “may not be based on a single episode of endangering conduct in the absence of evidence that such conduct is likely to reoccur. [Citation.]” (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993; *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.) We accept that proposition for argument’s sake and accordingly analyze whether there was substantial evidence the domestic violence between the parents was “likely to continue” and placed the child at risk of physical harm. (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1453.)

There was indeed such evidence. The juvenile court was entitled to rely on Mother's statements to conclude the April 2018 episode of domestic violence between Mother and Father was not the first. There had been another the month before, during which Father hit Mother on her arm and thigh hard enough to leave bruises. S.D. was three years old at the time and was in the family home with Mother and Father during the incidents. These two incidents of domestic violence were sufficiently recent (within three months of the filing of the Dependency petition and four months of the jurisdiction hearing) and serious to serve as reliable indicia of a substantial risk that the violence would continue and injure S.D. (See, e.g., *T.V.*, *supra*, 217 Cal.App.4th at p. 133; *R.C.*, *supra*, 210 Cal.App.4th at pp. 941-942; *E.B.*, *supra*, 184 Cal.App.4th at p. 576.) This is true even when viewed in light of the criminal protective order. Father and Mother initially violated the order, were working to have it vacated, and Mother, despite earlier statements to the contrary, stated she desired to reunite with Father.

There was also further evidence of a continuing risk of harm to S.D., specifically, Father's continued denial throughout the proceedings that any domestic violence had occurred. Though Father told a police officer who interviewed him after his arrest that he pushed Mother during the argument, he quickly recanted, saying "nobody touched each other at all" during the argument. Father otherwise denied engaging in problematic behavior, telling the Department the domestic violence was a mere misunderstanding. Contrary to Father's argument that he demonstrated he was "willing to do what was necessary" to safely reunite his family, he was unwilling to take the crucial first step of acknowledging his role in the events that led the family to

dependency court. (See, e.g., *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 [“One cannot correct a problem one fails to acknowledge”].) Father’s enrollment in an anger management course less than a month before the jurisdiction hearing, while perhaps a positive sign, is not good evidence he had resolved or even significantly addressed the issues that brought the family before the juvenile court.

Father nevertheless resists the conclusion that substantial evidence supports the jurisdiction findings by urging us to follow *In re J.N.* (2010) 181 Cal.App.4th 1010 (*J.N.*), a case that considered whether a single episode of parental conduct was sufficient to bring children under the juvenile court’s jurisdiction. *J.N.*, however, is inapplicable here because the parents in *J.N.* admitted to the behavior that brought the family before the dependency court, did not minimize it, and expressed remorse and willingness to learn from their mistakes. (See *J.N.*, at pp. 1017-1018, 1026; see also *In re M.R.* (2017) 8 Cal.App.5th 101, 109.) Here, by contrast, the repeated violence between Father and Mother cannot be chalked up to an aberration and Father did not acknowledge his wrongdoing and did not demonstrate he understood how it endangered S.D.⁵

⁵ Father also argues reversal is required because the juvenile court did not make express findings in the precise language of section 300, subdivision (b)(1), specifically that S.D. was at *substantial* risk of *physical* harm. Father made no contemporaneous objection to the court’s articulation of its findings, and the absence of such an objection forfeits the contention. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) The contention is also meritless because the court’s comments on the record reveal great facility with the pertinent provisions of the Welfare and Institutions Code, the court orally found both that

C. The Juvenile Court's Visitation Order Was Within Its Discretion

A dispositional order granting reunification services must provide for visitation “[i]n order to maintain ties between the parent . . . and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent” (§ 362.1, subd. (a); *In re T.M.* (2016) 4 Cal.App.5th 1214, 1218.) Section 362.1, subdivision (a)(1)(A) provides “[v]isitation shall be as frequent as possible, consistent with the well-being of the child.” An order setting visitation terms is reviewed for an abuse of discretion. (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356; *In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.) The juvenile court has broad discretion to determine what best serves a child’s interests and to fashion visitation orders accordingly. (*In re Megan B.* (1991) 235 Cal.App.3d 942, 953.)

Father contends the juvenile court abused its discretion by requiring monitored visits, albeit with discretion granted to the Department to liberalize visits to unmonitored (which the court encouraged the Department to exercise if early visits went well). He further contends no evidence supported the trial court’s decision to require monitored visitation, arguing the juvenile

there was “a risk of harm to this young child sufficient to sustain the jurisdiction of this court,” and the court found “count B1 of the petition is true as amended.” The b-1 count of the petition that the court found “true” alleged a substantial risk of serious physical harm in the precise language of section 300, subdivision (b)(1).

court impermissibly based its decision on an absence of affirmative evidence that visits between S.D. and Father were going well.

We hold to the contrary, concluding the order requiring monitored visitation was within the court's discretion on these facts. We have already determined the juvenile court was entitled to find the incidents of domestic violence put S.D. at risk of serious physical harm. Father repeatedly denied the existence of domestic violence, characterizing the events as a misunderstanding rather than accepting responsibility for his actions. Further, in Father's own words, he "lost it" during the April 2018 argument with Mother when she asked him how he would feel if she received phone calls from other men. While the record reflects Father had recently enrolled in an anger management class at the time of the jurisdiction hearing, there is no evidence indicating what, if any, progress he made after enrollment. Under the circumstances, the order requiring monitored visitation (with discretion to liberalize) was not an abuse of discretion.

DISPOSITION

The juvenile court's orders are affirmed.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.